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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2013- 722

12 **CAROLYN JEAN GASTON**
310 E. Ashlan
13 Fresno, CA 93704

A C C U S A T I O N

14 **Registered Nurse License No. 366446**

15 Respondent.

16
17 Louise R. Bailey, M.Ed., R.N. ("Complainant") alleges:

18 **PARTIES**

19 1. Complainant brings this Accusation solely in her official capacity as the Executive
20 Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

21 **Registered Nurse License**

22 2. On or about October 31, 1983, the Board issued Registered Nurse License
23 Number 366446 to Carolyn Jean Gaston ("Respondent"). The registered nurse license expired on
24 March 31, 2011, and has not been renewed.

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JURISDICTION

3. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

5. Code section 118, subdivision (b), provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

6. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct. . . .

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

7. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do the following:

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

1 8. Code section 4022 states, in pertinent part:

2 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
3 self-use in humans or animals, and includes the following:

4 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
5 without prescription," "Rx only," or words of similar import.

6 (b) Any device that bears the statement: "Caution: federal law restricts this
7 device to sale by or on the order of a _____," "Rx only," or words of similar import,
8 the blank to be filled in with the designation of the practitioner licensed to use or
9 order use of the device.

10 (c) Any other drug or device that by federal or state law can be lawfully
11 dispensed only on prescription or furnished pursuant to Section 4006.

12 COST RECOVERY

13 9. Code section 125.3 provides, in pertinent part, that the Board may request the
14 administrative law judge to direct a licentiate found to have committed a violation or violations of
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
16 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
17 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
18 included in a stipulated settlement.

19 FIRST CAUSE FOR DISCIPLINE

20 (Conviction of a Crime)

21 10. Respondent is subject to discipline under Code section 2761, subdivision (f), in that
22 on or about June 28, 2012, in the case of *People v. Carolyn Jean Gaston* (Superior Court of
23 California, Traffic Division, County of Madera, Case No. CCRO 38250), the court convicted
24 Respondent on her plea of no contest of violating Vehicle Code section 23152, subdivision (b)
25 (driving under the influence of alcohol while having a blood alcohol level in excess of .08%), a
26 misdemeanor, with a special allegation of Vehicle Code section 23578 (having a blood alcohol
27 level at or in excess of .15%), a crime that is substantially related to the qualifications, functions
28 or duties of a licensed registered nurse. The circumstances of the crime are that on or about
March 4, 2012, Respondent drove her vehicle through a fence. Respondent's blood alcohol level
was 0.19%. Respondent stated to officers that she had ingested marijuana and several Vicodin
pills earlier in the day.

1 **SECOND CAUSE FOR DISCIPLINE**

2 (Dangerous Use of Alcohol and Drugs)

3 11. Respondent is subject to discipline under Code section 2761, subdivision (a), on the
4 grounds of unprofessional conduct as defined in Code section 2762, subdivision (b), in that
5 Respondent used controlled substances, dangerous drugs within the meaning of Code
6 section 4022, and alcoholic beverages to an extent or in a manner dangerous or injurious to
7 herself, any other person, or the public, by operating a motor vehicle on or about March 4, 2012,
8 after using alcoholic beverages (as set forth in paragraph 10, above), marijuana, and Vicodin.

9 **THIRD CAUSE FOR DISCIPLINE**

10 (Conviction Involving the Consumption of Alcohol)

11 12. Respondent is subject to discipline under Code section 2761, subdivision (a), on the
12 grounds of unprofessional conduct as defined in Code section 2762, subdivision (c), in that on or
13 about March 4, 2012, Respondent was convicted of a crime involving the consumption of alcohol,
14 as set forth in paragraph 10, above.

15 **PRAYER**

16 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Board of Registered Nursing issue a decision:

18 1. Revoking or suspending Registered Nurse License Number 366446, issued to
19 Carolyn Jean Gaston;

20 2. Ordering Carolyn Jean Gaston to pay the Board of Registered Nursing the reasonable
21 costs of the investigation and enforcement of this case, pursuant to Business and Professions
22 Code section 125.3; and,

23 3. Taking such other and further action as deemed necessary and proper.

24 DATED: March 7, 2013

for *Louise R. Bailey*
LOUISE R. BAILEY, M.ED., R.N.
Executive Officer
Board of Registered Nursing
State of California
Complainant

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